

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES L DIXIE,

No C-09-2165 VRW (PR)

Plaintiff,

v

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

JAMES TILTON, et al,

Defendant(s).

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Plaintiff, a prisoner at Pelican Bay State Prison ("PBSP"), has filed a pro se civil rights complaint under 42 USC section 1983 alleging that the California Department of Corrections and Rehabilitation ("CDCR") and its officials have been deliberately indifferent to his serious medical needs. Specifically, plaintiff claims he was denied dental care from July 11, 1996 to October 18, 2004 and that as a result he now has periodontal disease and tooth loss. In his complaint, plaintiff names as defendants former CDCR secretary James Tilton, former CDCR director of Prison Health Services Peter Farber-Szekrenyi, former CDCR chief dentist of Adult Operations and Programs William Kuykendali, and the CDCR itself.

1 Plaintiff seeks damages. Doc #1 at 3.

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3 I

4 Federal courts must engage in a preliminary screening of
5 cases in which prisoners seek redress from a governmental entity or
6 officer or employee of a governmental entity. 28 USC § 1915A(a).
7 The court must identify cognizable claims or dismiss the complaint,
8 or any portion of the complaint, if the complaint "is frivolous,
9 malicious, or fails to state a claim upon which relief may be
10 granted," or "seeks monetary relief from a defendant who is immune
11 from such relief." Id § 1915A(b). Pleadings filed by pro se
12 litigants, however, must be liberally construed. Balistreri v
13 Pacifica Police Dep't, 901 F2d 696, 699 (9th Cir 1990).

14 To state a claim under 42 USC section 1983, a plaintiff
15 must allege two essential elements: (1) that a right secured by the
16 Constitution or laws of the United States was violated, and (2) that
17 the alleged violation was committed by a person acting under the
18 color of state law. West v Atkins, 487 US 42, 48 (1988).

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20 A

21 Deliberate indifference to serious medical needs violates
22 the Eighth Amendment's proscription against cruel and unusual
23 punishment. Estelle v Gamble, 429 US 97, 104 (1976). A "serious
24 medical need" exists if the failure to treat a prisoner's condition
25 could result in further significant injury or the "unnecessary and
26 wanton infliction of pain." McGuckin v Smith, 974 F2d 1050, 1059

1 (9th Cir 1992) (citing Estelle, 429 US at 104), overruled in part on
2 other grounds by WMX Technologies, Inc v Miller, 104 F3d 1133, 1136
3 (9th Cir 1997) (en banc). A prison official is "deliberately
4 indifferent" if he knows that a prisoner faces a substantial risk of
5 serious harm and disregards that risk by failing to take reasonable
6 steps to abate it. Farmer v Brennan, 511 US 825, 837 (1994).

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8 B

9 Liability may be imposed on an individual defendant under
10 section 1983 if the plaintiff can show that the defendant
11 proximately caused the deprivation of a federally-protected right.
12 See Leer v Murphy, 844 F2d 628, 634 (9th Cir 1988); Harris v City of
13 Roseburg, 664 F2d 1121, 1125 (9th Cir 1981). Sweeping conclusory
14 allegations will not suffice; the plaintiff must instead "set forth
15 specific facts as to each individual defendant's" deprivation of
16 federally-protected rights. Leer, 844 F2d at 634. Even at the
17 pleading stage, "[a] plaintiff must allege facts, not simply
18 conclusions, that show that an individual was personally involved in
19 the deprivation of his civil rights." Barren v Harrington, 152 F3d
20 1193, 1194 (9th Cir 1998). Although the federal rules require
21 brevity in pleading, a complaint must be sufficient to give the
22 defendants "fair notice" of the claim and the "grounds upon which it
23 rests." Erickson v Pardus, 551 US 89, 93 (2007) (citations
24 omitted). District courts, however, must afford pro se prisoner
25 litigants an opportunity to amend to correct any deficiency in their
26 complaints. Lopez v Smith, 203 F3d 1122, 1126-27 (9th Cir 2000) (en
27
28

1 banc) .

3 C

4 Liberally construed, plaintiff's allegations appear to
5 state a section 1983 claim for deliberate indifference to his
6 serious medical needs. But his complaint is deficient in that he
7 fails to set forth specific facts showing how each individual
8 defendant proximately caused the deprivation of a federally-
9 protected right. As a result, he will be afforded an opportunity to
10 amend his complaint within thirty days.

12 II

13 For the foregoing reasons, plaintiff's complaint is
14 DISMISSED WITH LEAVE TO FILE A FIRST AMENDED COMPLAINT containing
15 all related claims against all defendants that plaintiff wishes to
16 proceed against in this action. The pleading must be simple,
17 concise and direct and must state clearly and succinctly how each
18 and every defendant is alleged to have violated plaintiff's
19 federally-protected rights. See Leer, 844 F2d at 634; Harris, 664
20 F2d at 1125. The pleading must include the caption and civil case
21 number used in this order and the words COURT ORDERED FIRST AMENDED
22 COMPLAINT on the first page. Failure to file a proper first amended
23 complaint within thirty days of this order will result in the
24 dismissal of this action.

25 Plaintiff is advised that the first amended complaint will
26 supersede the original complaint and all other pleadings. Claims
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1 and defendants not included in the first amended complaint will not
2 be considered by the court. See King v Atiyeh, 814 F2d 565, 567
3 (9th Cir 1987).

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7 IT IS SO ORDERED.

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10 VAUGHN R WALKER
11 United States District Chief Judge
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